

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALUM ROCK UNION ELEMENTARY  
SCHOOL DISTRICT, EASTSIDE UNION  
SCHOOL DISTRICT, AND TAHOMA  
CHARTER SCHOOL.

OAH CASE NO. 2012110722

ORDER GRANTING ALUM ROCK'S  
MOTION TO DISMISS SPECIFIC  
CLAIMS

On November 21, 2012, Student filed with the Office of Administrative Hearings (OAH) Request for Due Process Hearing (complaint), naming the Eastside Union High School District (Eastside). On December 20, 2012, Student filed an Amended Due Process Hearing Request (amended complaint) against Eastside and adding as parties Summit Public School: Tahoma Charter School (Tahoma), Alum Rock School District (Alum Rock), and the Santa Clara County Office of Education (SCCOE). On January 9, 2013, OAH granted SCCOE's motion to be dismissed as party.

On January 30, 2013, Alum Rock filed a motion to dismiss claims against it that occurred after June 10, 2011, when Student exited from Alum Rock, and before December 20, 2010, for being outside the two-year statute of limitations. Only Tahoma submitted a response that objected to dismissal of claims after June 11, 2011.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under the IDEA or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

The statute of limitations for due process complaints in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C.

§ 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (I), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

## DISCUSSION

Alum Rock contends that all allegations against it that occurred after June 10, 2011, must be dismissed because Student exited from Alum Rock, an elementary school district, when she completed eighth grade, and became the legal responsibility of the high school district, Eastside. Tahoma asserts that Alum Rock should remain a party as to the allegations that occurred after June 10, 2011, because Student alleged that Alum Rock was a responsible party. However, Alum Rock, through the declaration of Jean Gallagher, Alum Rock's Director of Special Education, established that Student's last date of enrollment with Alum Rock was June 10, 2011. However, because Student would not attend Eastside until the first day of the 2011-2012 school year, he remained the legal responsibility of Alum Rock until then.<sup>1</sup> Therefore, Student's claims against Alum Rock are dismissed as of on or after the first school day of the 2011-2012 school year for Eastside.

As to the two-year statute of limitations effective date, although Student filed the original complaint on November 21, 2012, Alum Rock was not named as a party. Student first named Alum Rock as a party in the December 20, 2012 amended complaint. Therefore, the two-year statute of limitations runs from the date of the amended complaint, and thus Student's claims that occurred before December 20, 2010, against Alum Rock are dismissed.

## ORDER

Alum Rock's motion to dismiss is granted in part as claims against Alum Rock that occurred before December 20, 2010, and on or after the first school day for Eastside for the 2011-2012 school year are dismissed. The matter will proceed as scheduled as to the remaining issues.

Dated: February 6, 2013

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> If Student required extended year services during the summer of 2011, Alum Rock, not Eastside, would have provided those services.